IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10317 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMJU @ RAMJAN ABDULBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

Ms. Banna Dutta for MR ANIL S DAVE for Petitioner

Ms. Manisha Lavkumar, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta for the petitioner and learned AGP Ms. Manisha Lavkumar for the respondents nos.1, 2 and 3.

1. The petitioner-Ramju alias Ramjan Abdulbhai has filed the present petition under Article 226 of the Constitution to challenge the detention order dated 28-8-1999 passed against him by the respondent no.1-District Magistrate, Surendranagar, in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short).

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA", copy of which is produced at Annexure "C" inter alia indicate that four criminal cases for the offences made punishable under the Bombay Prohibition Act are registered against the petitioner at Dhranghadra City Police Station in between 24-1-1998 to 25-1-1999. That in each case countrymade liquor has been seized from the possession of the petitioner. All these cases are pending for trial in Court.

2.1 The grounds further indicate that four witnesses on assurance of their annonymity vide their statement dated 3-8--1999 have supplied information regarding the bootlegging activities, however, they have not given definite time, or place in respect thereof.

3. That in consideration of the aforesaid material, the detaining authority has come to the conclusion that the detenu is a " bootlegger" within the meaning of Sec.2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activity, the detention order is necessary, and hence, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It is contended on behalf of the detenu that on account of non explanation of delay in taking action of passing the detention order after the live link between the alleged antisocial activity and the action taken having been snapped, the detention order is bad in law. It is submitted that the cases relied on are registered between 10-4-1998 to 25-1-1999. The statements do not disclose any date, place or time in respect to any bootlegging activity and as such the action taken on 28-8-1999 by exercising powers under Section 3(1) of PASA appears to have been taken after the live link between the alleged criminal activity and the action taken having been snapped.

5. In the matter of PRADEEP NILKATNH PATURKAR VS.

S. RAMAMURTHY & ORS (AIR 1994 SC 656) having followed the earlier decisions, the Supreme Court has held that if the delay in taking the impugned action from the last date of antisocial activity of the detenu is not sufficiently explained the order is vitiated and cannot be sustained. That the same proposition has been reiterated by this Court in the matter of ELESH PATEL VS.C.P. AHMEDABAD reported vide 1997(1) G.L.H.381.

6. It is pertinent to note that despite due service of rule, none of the respondents have filed affidavit-in-reply to controvert the averments made in the petition. In the instant case, the last case registered against the petitioner being on 25-1-1999 and as he was released on bail on 25-1-1999, the impugned action taken on 28-8-1999 do not disclose any live link between the alleged criminal activity and action taken. The statements of anonymous witness do not give any cogent and convincing material so as to form a subjective satisfaction regarding the continued antisocial activity of the petitioner. The said statement having been recorded after the petitioner is released on bail do not inspire any confidence, particularly, in the absence of any contemporary material to support the same, and as such, there being no explanation on record for the inordinate delay which has occasioned, the impugned order could hardly be sustained.

7. As the petition succeeds on the aforesaid ground alone it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 28-8-1999 passed by the respondent no.1-District Magistrate, Surendranagar, against the the petitioner-detenu is hereby quashed and set aside. The petitionr-detenu-Ramju alias Ramjan Abdulbhai is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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